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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Benjamin Scott Hammar,
10 Petitioner,
11 v.
12 Charles L. Ryan, et al.,
13 Respondents.
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No. CV-15-01940-PHX-DLR

ORDER

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16 Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge
17 Bridget Bade, which recommends denying Petitioner Benjamin Hammar’s Petition for
18 Writ of Habeas Corpus. (Doc. 14.) It also recommends denying Petitioner a certificate
19 of appealability and leave to proceed in forma pauperis on appeal. (*Id.* at 21.) The
20 Magistrate Judge advised the parties that they had fourteen days to file objections to the
21 R&R and that failure to file timely objections could be considered a waiver of the right to
22 obtain review of the R&R. (*Id.* at 22 (citing Fed. R. Civ. P. 72(b); *United States v.*
23 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)).

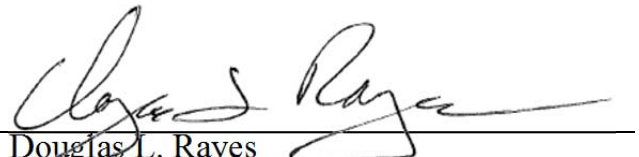
24 Neither party filed objections, which relieves the Court of its obligation to review
25 the R&R. *See Reyna-Tapia*, 328 F.3d at 1121; *Thomas v. Arn*, 474 U.S. 140, 149 (1985)
26 (“[Section 636(b)(1)] does not . . . require any review at all . . . of any issue that is not the
27 subject of an objection.”); Fed. R. Civ. P. 72(b)(3) (“The district judge must determine de
28 novo any part of the magistrate judge’s disposition that has been properly objected to.”).

1 The Court has nonetheless reviewed the R&R and agrees with Magistrate Judge Bade's
 2 recommendations. The Court will accept the R&R and deny the Petition. *See* 28 U.S.C.
 3 § 636(b)(1) (stating that the district court "may accept, reject, or modify, in whole or in
 4 part, the findings or recommendations made by the magistrate"); Fed. R. Civ. P. 72(b)(3)
 5 ("The district judge may accept, reject, or modify the recommended disposition; receive
 6 further evidence; or return the matter to the magistrate judge with instructions.").

7 Petitioner has also filed a Motion to Dismiss Case Without Prejudice, or, in the
 8 Alternative Stay in Abeyance. (Doc. 15.) Petitioner requests that the Court permit him to
 9 voluntarily dismiss his case while he exhausts his state court remedies for some of his
 10 claims. (*Id.* at 6.) However, the R&R recommends dismissing the Petition in part
 11 because Petitioner's claims are procedurally barred. (Doc. 14 at 9-10.) As such,
 12 Petitioner is unable to return to state court to exhaust his remedies, and his claims fail.
 13 (*Id.* at 9 ("In summary, Petitioner did not present the federal claims asserted in Grounds
 14 Two, Three (a), and Three (c) to the Arizona Court of Appeals either on direct appeal or
 15 post-conviction review. Those claims are technically exhausted and procedurally barred
 16 because it would be futile for Petitioner to return to the state courts to try to exhaust those
 17 claims.")). The motion is denied.

18 **IT IS ORDERED** that Magistrate Judge Bade's R&R (Doc. 14) is **ACCEPTED**,
 19 Petitioner's Motion to Dismiss, (Doc. 15), is **DENIED**, Petitioner's Petition for Writ of
 20 Habeas Corpus, (Doc. 1), is **DISMISSED**, a Certificate of Appealability is **DENIED**,
 21 and Petitioner may not proceed in forma pauperis on appeal. The Clerk shall terminate
 22 this action.

23 Dated this 27th day of April, 2016.

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 26 
 27 Douglas L. Rayes
 28 United States District Judge